

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

)	
)	
UNITED STATES OF AMERICA,)	8 U.S.C. § 1324c Proceeding
Complainant)	
)	
v.)	OCAHO Case No. 96C00024
)	
LEONOR YOLANDA ORTIZ,)	
Respondent.)	Judge Robert L. Barton, Jr.
)	
)	

**ORDER GRANTING COMPLAINANT’S MOTION TO DISMISS
AND ENTERING FINAL ORDER OF DISMISSAL**
(January 23, 1997)

I. PROCEDURAL BACKGROUND

Leonor Yolanda Ortiz (Respondent) has been the subject of two similar but separate complaints brought by the Immigration and Naturalization Service (INS or Complainant).¹ The first of those two complaints is the subject of Complainant’s present Motion for Dismissal of Respondent’s Request for Hearing Pursuant to 28 C.F.R. § 68.37(b)(1) and of this Order.² Respondent received a Notice of Intent to Fine on February 22, 1995, and requested a hearing in the

¹ The complaint in the second case, United States v. Leonor Yolanda Ortiz, OCAHO Case No. 96C00089, was filed on August 12, 1996. That complaint alleged that Respondent knowingly used, attempted to use, and possessed a forged, counterfeited, altered, and falsely made document, specifically a Social Security card bearing the number 620-60-8962, on or after February 23, 1995, for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA). Compl. (Case No. 96C00089) ¶¶ A-D. By order of December 10, 1996, I granted Complainant’s Motion for Summary Decision, ordering Respondent to pay a civil money penalty in the amount of \$250.00 and to cease and desist from violating section 274C(a)(2) of the INA, as codified at 8 U.S.C. § 1324c(a)(2).

² Complainant filed a motion to consolidate the two cases on August 13, 1996, but, since on December 10, 1996, I granted summary decision for Complainant in Case No. 96C00089, the motion to consolidate is moot.

present case by letter dated March 27, 1995. As a result, the INS filed its Complaint on February 28, 1996. Complainant alleged in the one-count Complaint, as subsequently amended,³ that Respondent knowingly used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Resident Alien Card, Form I-551, bearing the number A095318490 after November 29, 1990, and on or before February 22, 1995, for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA), specifically, to obtain employment at a business known as Sathers Candy. Compl. ¶¶ A-D. As a result, the Complaint alleged that Respondent is in violation of INA section 274C(a)(2), as codified at 8 U.S.C. § 1324c(a)(2), and requested a civil money penalty of \$250.00 and an order to cease and desist from violating section 274C(a)(2) of the INA.

Respondent filed her Answer, including an affidavit from herself, on April 9, 1996. In her Answer, Respondent denied the allegations of Complaint paragraphs C and D, that she used, attempted to use, and possessed the specified forged, counterfeited, altered, and falsely made Resident Alien Card, knowing that it was forged, counterfeited, altered, and falsely made, for the purpose of satisfying a requirement of the INA. Ans. ¶¶ 3-4. Respondent stated that she lacked sufficient information to form a belief as to the truth or falsity of paragraphs A and B, that she used, attempted to use, and possessed the specified forged, counterfeited, altered, and falsely made Resident Alien Card after November 29, 1990.⁴ Consequently, Respondent denied all the substantive allegations of the Complaint because a statement of lack of information has the effect of a denial. 28 C.F.R. § 68.9(c)(1) (1996). Additionally, Respondent asserted three affirmative defenses in her Answer. The first two affirmative defenses both were predicated on the assertion that the Complaint lacks a clear and concise statement of facts. I granted Complainant's motion, filed on July 2, 1996, to strike Respondent's first two affirmative defenses. PHC Tr. at 26; PHCR at 2. Respondent's third affirmative defense asserted that she believed the Resident Alien Card specified in the Complaint was a legitimate document.

On April 16, 1996, Complainant filed its Motion for Summary Decision, to which Respondent filed her opposition on April 22, 1996. I denied Complainant's Motion for Summary Decision by Order of May 21, 1996. United States v. Ortiz, 6 OCAHO 863 (1996) (Order Denying Complainant's Motion for Summary Decision). After the record had been developed more fully, Complainant filed its Memorandum in Support of Motion for Reconsideration of Motion for Summary Decision on August 13, 1996. Respondent submitted her Opposition to Complainant's Motion for Reconsideration of Summary Decision on August 16, 1996. I denied Complainant's Motion for Reconsideration by Order of August 30, 1996. United States v. Ortiz, 6 OCAHO 889

³ Complainant filed its Motion to Amend Complaint Under 28 C.F.R. § 68.9(e) on August 7, 1996. After Complainant altered the proposed amended language during the prehearing conference of August 23, 1996, PHC Tr. at 18; PHCR at 1, I granted Complainant's Motion to Amend, PHC Tr. at 24; PHCR at 1.

⁴ Respondent did not amend her Answer after Complainant amended the Complaint to allege that Respondent used, attempted to use, and possessed the specified forged, counterfeited, altered, and falsely made Resident Alien Card after November 29, 1990 and before or on February 22, 1995.

(1996) (Order Denying Complainant's Motion for Reconsideration of Summary Decision Ruling).

Incorporated with Respondent's Opposition to Complainant's Motion for Reconsideration of Summary Decision was Respondent's Motion for Sanctions Pursuant to 28 C.F.R. § 68.35. Complainant submitted its response to the Motion for Sanctions on August 19, 1996. On August 13, 1996, Complainant filed its Motion in Limine seeking to determine the admissibility of certain pieces of evidence prior to hearing. Respondent submitted her opposition to that Motion on August 22, 1996. On August 16, 1996, Respondent filed her Motion to Dismiss Under 28 C.F.R. §§ 68.28 and 68.35 and Fed. R. Civ. P. 41(b) and 16(f), to which Complainant submitted its response on August 20, 1996. Those three motions noted immediately above are pending in this case, and I will rule on them later in this Order.

Also on August 16, 1996, Respondent filed her Motion to Dismiss Under 28 C.F.R. §§ 68.7 and 68.10, to which Complainant filed its response on August 19, 1996. Respondent withdrew that Motion to Dismiss after the Complaint was amended. PHC Tr. at 24; PHCR at 1.

Respondent's then-attorney, Mr. Néstor Ho, moved the Court on November 18, 1996, to allow him to withdraw as counsel from this case and the still pending Case No. 96C00089. Mr. Ho stated in his Motion to Withdraw that Respondent consented to his withdrawal as counsel; also, Mr. Ho included an undated statement of authorization to withdraw signed by Respondent. Additionally, Mr. Ho stated that Respondent had withdrawn her pending asylum application and appeared to have left the United States. Mot. Withdraw at 1. Complainant submitted its opposition to Mr. Ho's Motion on November 19, 1996, and Mr. Ho filed a reply on November 26, 1996. Mr. Ho had attempted to contact Respondent at her last known address, but failed to do so. Ho Aff. ¶ 5 (attached as Exhibit A of Respondent's reply brief). Noting, among other points, that the Rules of Practice and Procedure that govern this proceeding allow service on an unrepresented party by mail at the party's last known address, United States v. Ortiz, 6 OCAHO 904, 6 (1996) (Order Granting Respondent Counsel's Motion to Withdraw) (citing 28 C.F.R. § 68.3(a) (1996)), on December 10, 1996, I granted Mr. Ho's Motion to Withdraw, id.

While my decisions regarding Mr. Ho's Motion to Withdraw and Complainant's Motion for Summary Decision in Case No. 96C00089 were pending, I entered a stay of proceedings by Order of December 2, 1996. On December 11, 1996, I issued an Order lifting the stay of the proceeding and requiring Respondent to make a submission to the Court within twenty days of the date of that Order. I required Respondent to provide information regarding the following: (1) whether she is ready to proceed to trial, (2) her current address, (3) whether she has a telephone number at which she can be reached and (4) her current plans to offer testimony from witnesses at trial. Respondent has not replied to that Order.

Complainant filed its Motion for Dismissal of Respondent's Request for Hearing Pursuant to 28 C.F.R. § 68.37(b)(1) on January 2, 1997. In that submission, Complainant moves the Court to dismiss Respondent's request for hearing and to enter a default order finding that Respondent has violated section 274C of the INA. In support of the Motion, Complainant notes that Respondent has

not responded to my December 11 Order. Complainant also asserts that Respondent failed to appear for her November 18, 1996, deportation hearing and was deported in absentia. Complainant suggests that Respondent has abandoned her request for hearing, and that OCAHO case law establishes that failure to respond to an order may result in dismissal of the request for hearing.

On January 3, 1997, I issued an Order Directing Respondent to Show Cause Why Complainant's Motion to Dismiss Respondent's Request for Hearing Should Not Be Granted. I noted that, pursuant to 28 C.F.R. sections 68.8(b)(2) and 68.11(b), a party has fifteen days in which to respond to a motion served by mail, and, thus, that Respondent's response to the Motion to Dismiss was due by January 17, 1997. Further, I ordered Respondent to show cause why her request for hearing should not be dismissed for failure to respond to my Order of December 11. I ordered Respondent to submit both her response to the Motion to Dismiss and her statement of cause by January 17, 1997. I admonished Respondent that, if she did not respond to the Motion or to the Order by the specified deadline, I might grant Complainant's Motion, enter judgment for the Complainant and grant Complainant the relief it requested in the Complaint. Respondent has not responded to my January 3 Order.

II. LEGAL ANALYSIS AND RULINGS

The OCAHO Rules of Practice provide that "[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it." 28 C.F.R. § 68.37(b) (1996). A party will be deemed to have abandoned its request for hearing if it "fails to respond to orders issued by the Administrative Law Judge." *Id.* § 68.37(b)(1); *see also United States v. Aquino*, 5 OCAHO 818, at 2 (1995); *United States v. Rodeo Night Club*, 5 OCAHO 812, at 2-3 (1995); *United States v. Hosung Cleaning Corp.*, 4 OCAHO 681, at 2 (1994); *United States v. Diamond Constr.*, 3 OCAHO 451, at 4 (1992). Respondent has failed to respond to my Orders of December 11, 1996, and January 3, 1997, even after I gave her notice in the January 3 Order of the consequences of failing to do so. As a result, I find that Respondent has abandoned her request for hearing.

"OCAHO caselaw demonstrates that failure to respond to an order triggers a judgment of default, equivalent to dismissal of the [respondent]'s request for hearing, against [a respondent] who fails to respond to the invitation of such an order." *Rodeo Night Club*, 5 OCAHO 812, at 2. Accordingly, I find that Respondent is in default for failing to respond to my above-noted orders, and I enter judgment for Complainant.

III. CONCLUSION

I find that Respondent, by failing to respond to orders of this Court, specifically my orders of December 11, 1996, and January 3, 1997, has abandoned her request for hearing. Consequently, I grant Complainant's Motion for Dismissal of Respondent's Request for Hearing Pursuant to 28 C.F.R. § 68.37(b)(1). I dismiss this case and enter judgment for Complainant. Because Respondent is in default, I find, as alleged in the Complaint, that she knowingly used, attempted to use, and possessed the forged, counterfeited, altered, and falsely made Resident Alien Card, Form I-551,

bearing the number A095318490 after November 29, 1990, and on or before February 22, 1995, for the purpose of satisfying a requirement of the Immigration and Nationality Act, specifically, to obtain employment at a business known as Sathers Candy. Therefore, I find that Respondent is in violation of INA section 274C(a)(2), as codified at 8 U.S.C. § 1324c(a)(2), and order Respondent to pay a civil money penalty of \$250.00 and to cease and desist from violating section 274C(a)(2) of the INA.

Complainant's Motion for Consolidation and Motion in Limine and Respondent's Motion for Sanctions Pursuant to 28 C.F.R. § 68.35 and Motion to Dismiss Under 28 C.F.R. §§ 68.28 and 68.35 and Fed. R. Civ. P. 41(b) and 16(f), as well as any other pending motions not specifically listed, are rendered moot and, therefore, are denied.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

NOTICE REGARDING APPEAL

Pursuant to the Rules of Practice and Procedure, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief Administrative Hearing Officer (CAHO) a written request for review, with supporting arguments, by mailing the same to the CAHO at the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. The request for review must be filed within thirty (30) days of the date of the decision and order. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become the final order of the Attorney General of the United States unless, within thirty (30) days of the date of the decision and order, the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324c(d)(4); 28 C.F.R. § 68.53.

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a person or entity adversely affected by a final decision and order issued by the Administrative Law Judge or the CAHO may, within forty-five (45) days after the date of the Attorney General's final agency decision and order, file a petition in the United States Court of Appeals for the appropriate circuit for review of the final decision and order. A party's failure to request review by the CAHO shall not prevent a party from seeking judicial review in the appropriate circuit's Court of Appeals. See 8 U.S.C. § 1324c(d)(5); 28 C.F.R. § 68.53(a)(3).

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 1997, I have served the foregoing Order Granting Complainant's Motion to Dismiss and Entering Final Order of Dismissal on the following persons, by first class mail (unless otherwise indicated), at the addresses indicated:

Terry Louie
Assistant District Counsel
Immigration and Naturalization Service
P.O. Box 11898
St. Paul, MN 55111
(Counsel for Complainant)

Leonor Yolanda Ortiz
1410 Colorado Ave., #112
St. Louis Park, MN 55416
(Respondent)
(By first class mail and by certified mail, return receipt requested)

Dea Carpenter
Associate General Counsel
Immigration and Naturalization Service
425 "I" Street, N.W., Room 6100
Washington, D.C. 20536

Office of Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041
(Hand delivered)

Linda S. Hudecz
Legal Technician to Robert L. Barton, Jr.
Administrative Law Judge
Office of Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, VA 22041
Telephone No.: (703) 305-1739
Fax No. (703) 305-1515